

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KHOA DANG NGUYEN,

Plaintiff,

v.

U. S. CONSULTANT GENERAL,

Defendant.

Case No.: C 08-4076 PVT

**ORDER DENYING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT; AND**

**ORDER TO SHOW CAUSE WHY
SUMMARY JUDGMENT SHOULD
NOT BE ENTERED AGAINST
DEFENDANT**

On January 13, 2009, the parties appeared before Magistrate Judge Patricia V. Trumbull for hearing on Defendant’s motion for summary judgment.¹ Based on the briefs and arguments presented,

IT IS HEREBY ORDERED that Defendant’s motion is DENIED.

Defendant argues that summary judgment is warranted because the consular officer who denied Plaintiff’s petition for a non-immigrant visa for his fiancé purportedly articulated a facially legitimate and bona fide reason. However, Defendant has failed to demonstrate that no genuine issue of material fact exists for trial. *See Celotex v. Catrett*, 477 U.S. 317, 322 (1986).

The only reason for denying the visa relied on by Defendant is the claim that Plaintiff “failed

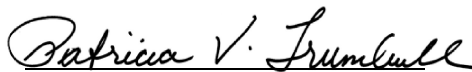
¹ The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

1 to complete the petition fully and did not disclose all prior marriages, as requested in Part A, item 9
2 of Form 129F, and as required under 8 C.F.R. § 103.2(a)(1).” Defendant argues that such
3 information is necessary to evaluate the beneficiary’s eligibility for a visa. Plaintiff has filed copies
4 of documents he submitted in response to Defendant’s request for additional information. Included
5 in those documents is a copy of the first page from the Judgments of Dissolution for each of his two
6 prior marriages. (See Plaintiff’s exhibit 128.) Those two documents identify the names of each prior
7 wife and the date each prior marriage was dissolved. That is the only information requested in Part
8 A, item 9 of Form 129F.

9 In ruling on a motion for summary judgment, the court must draw all reasonable inferences in
10 favor of the non-moving party. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991);
11 *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 588 (1986). Based on the record
12 presently before the court, there is a reasonable inference that Plaintiff *did* disclose all prior
13 marriages, that Defendant *had* received that information from Plaintiff, and that the Defendant’s
14 reason for denying the visa was thus not “bona fide.” See *Bustamante v. Mukasey*, 531 F.3d 1059,
15 1062-63 (9th Cir. 2008) (declining to remand to district court for factual development only because
16 the plaintiffs in that case had not alleged bad faith and the record reflected the consular officer’s
17 “sincere belief” in the reason articulated for denying the visa).

18 IT IS FURTHER ORDERED that, no later than February 27, 2009, Defendant shall file a
19 declaration showing cause, if any, why summary judgment mandating issuance of the visa should not
20 be entered against Defendant based on the fact that Plaintiff had, in fact, provided the requested
21 information to the consular officer, and thus the reason proffered for the denial of the visa was not
22 bona fide. See *Celotex v. Catrett*, 477 U.S. 317, 326 (1986) (noting that courts may enter summary
23 judgment *sua sponte* so long as the losing party was on notice that it had to come forward with all of
24 its evidence).

25 Dated: 1/21/09

26 
27 PATRICIA V. TRUMBULL
28 United States Magistrate Judge

Counsel automatically notified of this filing via the court's Electronic Case Filing system.

copies mailed on 1/21/09 to:

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/s/ Donna Kirchner for
CORINNE LEW
Courtroom Deputy